

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

| | | |
|--------------------|---|-----------------------|
| Larry Gene Martin, |) | |
| |) | C/A No. 4:11-0473-MBS |
| Petitioner, |) | |
| |) | |
| vs. |) | |
| |) | ORDER |
| Warden Tim Riley, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

Petitioner Larry Gene Martin, Jr. is an inmate in custody of the South Carolina Department of Corrections. Petitioner, proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on February 28, 2011. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling.

On July 26, 2011, Respondent filed a motion for summary judgment. By order filed July 28, 2011, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Petitioner was advised of the summary judgment procedures and the possible consequences if he failed to respond adequately. When no response to the motion for summary judgment was received, the Magistrate Judge issued a Report and Recommendation in which he recommended that the § 2254 petition be dismissed for failure to prosecute and/or failure to comply with orders of the court. See Fed. R. Civ. P. 41(b). In the alternative, the Magistrate Judge recommended that the claims set forth in Petitioner's § 2254 petition be dismissed as procedurally defaulted.

On September 23, 2011, Petitioner filed objections to the Report and Recommendation and a motion to file a response to Respondent's motion for summary judgment. ECF Nos. 31, 32.

Petitioner contends that he mailed his response to Respondent's motion to the Office of the Clerk of Court on August 3, 2011. However, the response was not received. Petitioner moves the court to allow him to resubmit his response to Respondent's motion.

Petitioner is granted leave to file his response to Respondent's motion for summary judgment no later than February 13, 2011. The court will take Petitioner's response into account in reviewing the Magistrate Judge's Report and Recommendation. Respondent is granted leave to file a reply to Petitioner's response, if desired, within five days after the date of filing of Petitioner's response.

No further extensions will be granted.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Chief United States District Judge

Columbia, South Carolina

February 1, 2012.